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A Mamluk Handbook for Judges and the Doctrine of Legal Consequences (*al-mūǧab*)

Talal Al-Azem

Abstract: By the fifteenth century, many legal jurisdictions throughout the Mamluk realm were pluralistic: all of the four Sunni *maḏhab*-s were represented by their own courts within a single political jurisdiction. Naturally, this pluralism had the potential of descending into judicial chaos, if judges hailing from different *maḏhab*-s were to refuse or negate the judgments of parallel *maḏhab*-jurisdictions. It is towards addressing this and other concerns regarding the judiciary that the Ḥanafī jurist al-Qāsim Ibn Quṭlūbuġā (d. 879/1474) authored a handbook for judges, *Mūǧabāt al-aḥkām wa-wāqiʿāt al-ayyām*. After providing an overview of the structure and objective of the work, this article addresses its first and central theme — namely, the doctrine of "legal consequence" (*al-mūǧab*) — and analyzes how the set of procedural rules associated with this doctrine were part of a solution to the conflict of laws latent in a multi-*maḏhab* judiciary. I argue that this doctrine, one of a number of such jurisprudential doctrines and procedures shared by the *maḏhab*-s, is evidence of the development of a wider *maḏhab*-law legal system underpinning the four Sunni *maḏhab*-s in the Mamluk era.

Keywords: Islamic jurisprudence, Mamluk judiciary, judicial pluralism, conflict of laws, legal systems, legal rules.

Résumé : Au xv^e^ siècle, de nombreuses juridictions de l'empire mamluk se caractérisaient par leur pluralisme. Les quatre *maḏhab*-s sunnites étaient chacun représentés par leur propre tribunal au sein d'une même juridiction politique. Un tel pluralisme risquait de conduire au chaos judiciaire si des juges provenant de différents *maḏhab*-s refusaient ou annulaient le jugement énoncé par le tribunal d'un *maḏhab* parallèle. C'est entre autres choses afin de résoudre ce problème que le juriste ḥanafite al-Qāsim Ibn Quṭlūbuġā (m. 879/1474) rédigea un manuel destiné aux juges, *Mūǧabāt al-aḥkām wa-wāqiʿāt al-ayyām*. Après avoir présenté la structure et les objectifs de l'ouvrage, le présent article en aborde le thème central – la doctrine de la "conséquence juridique" (*al-mūǧab*) – et analyse la manière dont les règles de procédures associées à cette doctrine contribuaient à résoudre le conflit de lois latent dans un appareil judiciaire contrôlé par plusieurs *maḏhab*-s. Je propose que cette doctrine, qui représente l'une

des nombreuses règles relatives aux procédures partagées par les différents *maḏhab*-s, illustre le développement d'un système juridique et judiciaire global, permettant de consolider le fonctionnement des quatre *maḏhab*-s sunnites à l'époque mamluke.

Mots-clés : Droit islamique, système judiciaire mamluk, pluralisme judiciaire, conflit de lois, système juridique, règles juridiques.

الملخص : بحلول القرن الخامس عشر الميلادي، كان الكثير من المنظمات القضائيّة في الولايات المملوكيّة تتّسم بالتعدديّة : فإن كلّ من المذاهب السنيّة الأربعة تمثله محكمة خاصّة تحت الولاية السياسية المملوكية الواحدة. فكادت تؤدي هذه التعدديّة إلى فوضى قضائيّ إذا رفض قضاة المذاهب المختلفة الأحكام الصادرة عن مذهب آخر أو أبطلوها. وبهدف تطوير أجوبة فقهيّة وقضائية إجرائية لهذه المشكلة، لقد قام الفقيه الحنفيّ القاسم بن قطلوبغا (ت ٨٧٩ / ١٤٧٤) بتأليف كتابه موجبات الأحكام وواقعات الأيام. فبعد نظرة شمولية لهيكليّة وغايات هذا الكتاب، سيتطرّق هذا البحث إلى موضوعه الأول والمركزي – ألا وهي نظرية الموجب – وكيف كانت القواعد الإجرائية الحاصلة من هذه النظرية تشكل جزءاً من الحل لمشكلة التعارض الحكمي المحتمل من نظام مبني على التعدديّة القضائية. وأزعم أن هذه النظرية – وهي إحدى النظريات الفقهية والإجرائيات القضائية التي تشترك فيها المذاهب – تدلّ على تطور تاريخي لنظامٍ قضائيٍّ مذهبيٍّ شامل وواسع النطاق يدعم المذاهب السنية الأربعة في العصر المملوكي.

الكلمات المحوريّة : الفقه الإسلامي، تاريخ النظام القضائي المملوكي، القاضي، التعددية المذهبية، التعددية القضائية.

The connexion between social institutions and intellectual developments in medieval Islamicate societies is often a vexed question, and this remains no less the case for the Mamluk period. Building upon Émile Tyan's foundational work on the judiciary in Muslim lands,[1] a number of studies have since shed light on the factors and motives behind the development of pluralistic judiciaries in medieval Islamdom, culminating in the Mamluk quadruple judicial system instituted by Sultan al-Ẓāhir Baybars in 663/1265.[2] Others have advanced our understanding of the intellectual history of Islamic law, by demonstrating the relationship between nascent legal-literary genres and the rise of a *taqlīd*-based juristic regime in the early middle periods.[3] In most of these monographs, the focus has (understandably) been on either institutional *or* intellectual developments in medieval Muslim law. Happily, a number of works in recent decades have attempted to link together these two fields of enquiry, and in so doing have not only dislodged the commonplace division of medieval Islamic law into clearly distinct categories of "theory" and "practice",[4] but have also moved beyond earlier portrayals of post-formative jurisprudence as static and unconnected to wider social realities,[5] and the judiciary as nothing more than unprincipled "kadi justice".[6] Yet, in the context of the medieval judicial system, a number of questions regarding the relationship between legal doctrine and practice remain partially or completely unanswered.[7]

The present study poses one such question in the context of the fifteenth-century Mamluk judicial system:[*] How did scholars and legal officials protect against the risk of judicial chaos inherent in such a pluralistic judicial system, in light of the Mamluks' concurrent *maḏhab* jurisdictions? In order to answer this question in some measure, I shall analyse a work written in the fifteenth century that was, in part, written to address

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1. TYAN 1960.
2. ESCOVITZ 1982, p. 529-31; ALLOUCHE 1985, p. 317-20; JACKSON 1995, p. 52-65; NIELSEN 1984, p. 167-76; RAPOPORT 2003, p. 210-28.
3. FADEL 1996, p. 193-233; CALDER 2010, esp. p. 74-115.
4. Baber Johansen and Wael Hallaq have done the most to dispel such notions. See especially JOHANSEN 1995, p. 135-56; *idem* 1999; *idem* 2007, p. 143-63; HALLAQ 1994, p. 29-65; and *idem* 1999, p. 437-66.
5. Again, see JOHANSEN 1988; *cf.* IBRAHIM 2009, p. 337-82. These historiographical advances in bridging the disciplinary divide have been abetted by recent progress in the editing of legal documentary sources from the High Middle Periods, which promise much especially to the Mamluk historian who has hitherto been flummoxed by the lack of extant judicial records. See now REINFANDT 2013, p. 285-309; MOUTON, SOURDEL, and SOURDEL-THOMINE 2013; and "Islamic Law Materialized", a project hosted by the Arabic section of the Institut de Recherche et d'Histoire des Textes, at http://www.ilm-project.net/
6. See POWERS 1992, p. 315-42; and FADEL 1997, p. 49-86.
7. A recent exception is Christian MÜLLER 2013, "Mamluk Law: a reassessment", in which the question as to how Mamluk law actually functioned is correctly related to that of the existence of a unique Mamluk "legal system". While the present paper refrains from committing to the specific sociological approach and terminology of Joseph Raz as employed by Müller, it does validate Müller's assertion that only through studying the practice of law in a specific society can we better understand the relationship of *fiqh* to historical legal systems.

exactly this problem. *Mūǧabāt al-aḥkām wa-wāqiʿāt al-ayyām*[8] ("The Legal Consequences of Judgments, and the Novel Cases of the Age") was authored by a late-Mamluk Ḥanafī jurist, al-Qāsim Ibn Quṭlūbuġā (d. 879/1474), a highly respected scholar in his day, and deemed by later *fuqahā'* to have been a *muǧtahid* of the *maḏhab*.[9] *Mūǧabāt al-aḥkām* was a legal handbook written by a celebrated *muǧtahid*-level jurist for the judges of the pluralistic Mamluk judiciary, to serve as a reference work on judicial *problemata* — substantial and procedural — that might be faced in a courtroom situated within the pluralistic Mamluk judicial system. As a *muǧtahid*-level jurist attempting to systematise both procedural and substantive rules needed by then-contemporary judges, Ibn Quṭlūbuġā provides us with a clear window, I argue, unto the existence of a wider *maḏhab*-law system constructed by the *maḏhab*-based jurists themselves, and within which the individual *maḏhab*-s were subsumed. This *maḏhab*-law legal system — built as it was upon intellectual traditions, positive laws, and jurisprudential mechanisms developed over hundreds of years preceding — was meant to provide a stable, predictable, and ultimately rational rule of law in Mamluk jurisdictions and society, despite the presence of a judicial pluralism that had been established and sanctioned by the political regime.

Mūǧabāt al-aḥkām addresses a number of the related jurisprudential doctrines which, I argue, comprise the *maḏhab*-law system. The present paper, however, addresses only one of the body of jurisprudential doctrines and procedures shared by the four *maḏhab*-s: namely, the legal doctrine of "legal consequence" (*al-mūǧab*), the first doctrine treated by Ibn Quṭlūbuġā in his work. We shall begin by presenting a brief outline of the *Mūǧabāt*

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8. Ibn Quṭlūbuġā, *Mūǧabāt al-aḥkām*, p. 591. It is only correct at this juncture that I declare my indebtedness to the editor of the *Mūǧabāt*, Muḥammad al-Muʿīnī, whose philological efforts in identifying the persons, texts, and even quoted passages mentioned in the text spared me some of the groundwork required for the historical and legal analysis that the present article undertakes. I have come across only one study which has identified the importance of the *Muǧabāt al-aḥkām* in the context of the history of Islamic jurisprudence, namely that of Lutz WIEDERHOLD 1996, p. 234-304. Whilst Wiederhold's work, alongside Jackson's study of al-Qarāfī of the same year, was an important advance in its study of the role of *tarǧīḥ* in resolving conflicts of legal doctrines in the history of Islamic jurisprudence, the author unfortunately often conflated and confused *tarǧīḥ* in each of the disciplines of *uṣūl al-fiqh* and *fiqh*, where in the former it serves to resolve conflicting hermeneutical "indicators" of the law in the *muǧtahid*'s task of formulating *fiqh* opinions, whilst in the latter *tarǧīḥ* serves to identify the correct rule of a *maḏhab* out of the body of existing and conflicting legal opinions. In so doing, Wiederhold fails to fully appreciate the significance of Ibn Quṭlūbuġā's contributions in the context of the *maḏhab*-law tradition on the one hand, and to the Mamluk pluralistic judicial system on the other, partially misunderstanding the relationship between the jurist's doctrine of the *mūǧab* and of *tarǧīḥ*. Likewise, Zouhair Ghazzal touches upon the notion of the *mūǧab* in his ethnography of court documents in GHAZZAL (2007), p. 382-83. However, he appears to incorrectly attribute the coinage of the term "*al-ḥukm bi-l-mūǧab*" to the Ḥanafī jurist Ibn Nuǧaym (d. 970/1562); as shall be demonstrated below, the history of this jurisprudential doctrine dates much earlier and precedes even Ibn Quṭlūbuġā himself. Later in his extensive and insightful work (*Ibid*., 485), though, Ghazzal does recognize that Ibn Nuǧaym, having lived through the transition to Ottoman rule several decades after Ibn Quṭlūbuġā, draws upon a previous work our Mamluk-era jurist, namely in a collection of fatwas entitled *al-Fatāwā al-Qāsimiyya* that also relies upon some of the very jurisprudential doctrines in providing responses to questions posed to Ibn Quṭlūbuġā.

9. Al-Saḫāwī, *al-Ḍaw' al-lāmiʿ*, VI, p. 184–190. On Ibn Quṭlūbuġā's biography and for assessments of his historical importance, cf. ROSENTHAL, s.v. "Ibn Ḳuṭlūbughā", *Encyclopaedia of Islam, Second Edition* 2014; MUNDY 2004, p. 142-65; and AL-AZEM 2011, p. 26-36.

al-aḥkām's structure, in order to establish Ibn Quṭlūbuġā's overarching objective in authoring the work, and the relative position of the doctrine of *mūğab* therein. By means of a close reading of the arguments and methods utilised by Ibn Quṭlūbuġā in the sections of the work treating "legal consequence", we shall analyse how the set of procedural rules following from this doctrine formed part of the solution to the conflict of laws latent in the multi-*maḏhab* judiciary.

The structure and audience of *Mūğabāt al-aḥkām wa-wāqiʿāt al-ayyām*

According to Šams al-Dīn al-Saḫāwī (d. 902/1497), a friend of Ibn Quṭlūbuġā and his principal biographer, the latter held neither judicial nor teaching posts that were particularly prestigious, despite being recognised in his own lifetime as one of the foremost jurists of the Ḥanafi *maḏhab* of his age. Rather, living for much of his life simply in a Sufi convent in Cairo, he authored more than a hundred works[10] and was frequently consulted on controversial and unprecedented, contemporary matters (*nawāzil*).[11]

The opening lines of the *Mūğabāt al-aḥkām* intimate one occasion in which the author was presented with such a contemporary matter: namely, a case of conflicting laws resulting from the plurality of legal jurisdictions in the Mamluk judiciary. While we shall return below to a fuller analysis of the jurisprudential ideas presented in this introduction, we may begin by noting that it is the resolution of the jurisprudential problems underlying this incident, whilst providing judges of the day with clear guidance as to the procedural dimensions of their responsibilities — advanced via the familiar trope of a favoured student requesting an explicit treatment of these *problemata* by the senior jurist[12] — that serve as the final cause of the *Mūğabāt*. This favoured student's request serves the rhetorical demarcation between the introduction and the very body of the work, the structure of which we may thus reasonably divide into a preface and four main parts:[13]

10. For the most complete catalogue of Ibn Quṭlūbuġā's output to date, see the introduction of Ḍiyā' al-Dīn Yūnus to his edition of Ibn Quṭlūbuġā, *Mūğabāt al-aḥkām*.

11. Al-Saḫāwī, *al-Ḍaw' al-lāmiʿ*, VI, p. 188.

12. Ibn Quṭlūbuġā, *Mūğabāt al-aḥkām*, p. 73.

13. It should be noted that, in the printed edition of 1983, it is the editor who has introduced most of the section headings, his additions of which he demarcated by parentheses: p. 110 (*al-daʿwā*), p. 132 (*al-ḥaṣm fī al-daʿwā*), p. 181 (*al-daf' wa-masā'ili-hi*), p. 196 (*al-taṣḥīḥ*), p. 414 (*al-maḥāḍir wa-l-siğillāt*), p. 420 (*al-siğillāt*), p. 437 (*ithbāt al-siğill*), and p. 458 (*al-ḥalal wa-l-maṭāʿin fī al-maḥāḍir wa-l-siğillāt*). Only the section headers on p. 75 (*mūğabāt al-aḥkām*) and p. 450 (*al-kitāb al-ḥukmī*) are free of these editorial markers. Indeed, the section header for *al-daʿāwa* on p. 110, for example, demarcates the beginning of the author's catalogue of formulas to be used during pleadings; as for the theoretical discussion as to the conditions for the validity of claims (*šarā'iṭ al-daʿwā al-ṣaḥīḥa*), thus marking the beginning of the section treating pleadings, this actually begins on p. 104 of the edition, without the benefit of a heading.

- §1. *The preface*, recounting the incident of judicial error leading to the compilation of the work, which the author uses to establish the supra-*maḏhab* nature of the doctrine of *mūǧabāt al-aḥkām* (p. 69-74);[14]
- §2. *On legal consequences*: a presentation of the theory of legal consequences (*al-mūǧab*) and a delimitation of its scope, as well as a catalogue of the consequential obligations resulting from court decisions (*mūǧabāt al-aḥkām*) (p. 75-104);
- §3. *On proceedings*: the conditions and procedures for establishing a claim (*daʿāwā*) and a defence (*daf' al-ḫuṣūmāt*) (p. 104-131);
- §4. *On binding precedents*: a catalogue of the correct rules — the juristic precedents — upon which judgments are to be issued (*taṣḥīḥ*) (p. 196-413);[15]
- §5. *On court documentation*: the procedures and models for court documentation, namely, official minutes of the court (*al-maḥāḍir*), judicial registers (*al-siǧillāt*), and notarizations (*al-kutub al-ḥukmiyya*) (p. 414-468).

In each of the main four sections, the procedural rules, substantive rules, or the models are organized according to the regular organizational rubric of *fiqh* works. As may be expected, however, only those sections of *fiqh* that treat civil or criminal matters — those issues which are the within the remit of a court of law — are mentioned.

One can perceive in these four sections an organizational scheme that mirrors the process that a judge would follow in working through a case presented to him, and indeed each of these five parts comprises subsections and instructions as to the details of the task. First, the judge is to recognize and determine what obligations, if any, would result from the action under question, whether disputed or simply requiring notarization. Next, the establishment of pleadings, in which each of the claimant and the defendant are identified; valid claims are distinguished from invalid claims; who from the claimants, defendants, and witnesses must be present or summoned to the court; all of which includes the drafting of answers by the defendant to the plaintiff's claim, and likewise replies by the primary plaintiff (*daf' al-daf'*) to the defendant's defense or counterclaims. The next stage would involve the judge determining which of the legal opinions transmitted in the centuries-old *fiqh* works associated with his court's *maḏhab* was to be deemed the juristically-established precedent (*al-muḫtār*), the correct legal rule (*al-rāǧiḥ*, or *al-ṣaḥīḥ*), and thus was to form the *legally-binding* basis of his judgment or decree. Finally comes documentation through the drafting of minutes, registers, and debt records; and the execution of the court's decrees by writ (*tanfīḏāt*).

Our author's rhetorical use of transitional phrases provides further evidence as to what type of work he intended, and as to the audience he was addressing. Expressions such as "*fa-iḏā ʿarafta ḏālik...*" ("if you now know this") are found repeatedly in the work: they

14. All page ranges refer to the printed edition by AL-MUʿĪNĪ of Ibn Quṭlūbuġā, *Mūǧabāt al-aḥkām*.

15. The use of the term "precedent" in the context of Islamic law is, of course, contested. Nonetheless, I would posit that this usage is not only justified but indeed necessary in order to understand the history and functioning of the *maḏhab*-law system for which I am arguing here. I hope to demonstrate this point in a forthcoming article that will serve as a continuation to the present study, and where I will treat the *Mūǧabāt al-aḥkām*'s fourth section on binding precedents more fully.

regularly mark a transition from one concept, procedure, or catalogue of rules or formulas, to the next matter that must be borne in mind by the reader; or from the demonstration of an overarching jurisprudential doctrine to a demonstration of the particular rules or formulas specific to a certain section of the law that should be observed by the reader. Thus, for example, in transitioning from his preface, Ibn Quṭlūbuġā turns to fulfilling his favored student's request of spelling out the legal consequences for all legal transactions (*al-taṣarrufāt al-šarʿiyya*) which they might encounter, "that perchance", the student reasons, "he who learns it might be saved from the blindness in which he finds himself".[16] After a quick sampling of five Ḥanafī *fiqh* works which provide proof that the consequences of legally-significant acts are to be found explicitly mentioned in the works of the *maḏhab*, Ibn Quṭlūbuġā turns to cataloguing the consequences of legally-significant acts, announcing this transition with the phrase "*iḏā ʿurifa hāḏā...*" ("If this now is known").[17] Again, having completed his inventory of such consequences, he declares, "If you now know this, then understand that the legal consequences must be explicitly stated in judicial decisions, if that consequence is itself the very purpose of the litigation",[18] at which he proceeds to spell out the various consequences that may be entailed by any given act. Again, some pages later, he precedes his catalogue of the formulas utilised for expressing a valid claim by stating: "And now, if you have come to know the conditions of a valid claim, then realise that most jurists stipulate that such conditions be explicitly mentioned in a judgment, in order for the claim to be deemed valid".[19] Again and again, the beneficiaries of the book are addressed ("Here, then, do I present you with some of the relevant cases"[20]), in clear and instructive, almost paternal, tones.[21] Both the practical structure, as well as the rhetorical device of addressing someone who would *use* the book in the context of working through a legal proceeding, underline that the *Mūğabāt* was intended to serve as a handbook for judges, and particularly for those whose own mastery of the *fiqh* tradition which informs the substantive and procedural rules undergirding their official responsibilities was found wanting.

This, then, is a book of law for legal officials, and not a book of *fiqh* for jurists. While dependent upon the substantial and procedural rules developed by jurists in the disciplinary works of *fiqh*, the *Mūğabāt* is written for judges who have been appointed by the state to a *maḏhab*-specific judiciary, and who require guidance as to the correct procedures and

16. Ibn Quṭlūbuġā, *Mūğabāt al-aḥkām*, p. 73.
17. Ibn Quṭlūbuġā, *Mūğabāt al-aḥkām*, p. 74.
18. Ibn Quṭlūbuġā, *Mūğabāt al-aḥkām*, p. 102.
19. Ibn Quṭlūbuġā, *Mūğabāt al-aḥkām*, p. 109.
20. Ibn Quṭlūbuġā, *Mūğabāt al-aḥkām*, p. 132.
21. "In light of the preceding, know that litigation often entails a defense, with which you must necessarily be familiar. Here, then, is an introduction to it, before we delve into its details." (p. 181); "And here I shall now explicitly relate for your benefit the binding rule (*al-muḫtār*)..." (p. 196); and "If you now know this, all that remains is for it to be formulated in writing, the locus of which are the judicial registers and court records..." (p. 414).

legal rules to follow in executing their jurisdictionally-delimited duties. As noted above, there is no mention of those issues of *fiqh* that are ritual or merely moral matters left to the individual's conscience and God: the remit is that of law (*qaḍā'*), and not of religiously-established morality (*diyānat*).[22] But it is clearly not primarily a compendium of positive-law: the structure and literary openings and transitions of the work betray a procedural concern, even if each of the sections then details the positive legal rules that the judge is to observe. Rather, as has been demonstrated, Ibn Quṭlūbuġā is directly addressing not the jurists (as legal scholars) but the judges (as legal officials) of his day. The *Mūǧabāt al-aḥkām* is a handbook for judges, written by a leading jurist, with the aim of aiding those struggling in their posts with the very objectives, mechanisms, and substance of their craft.

The theory of legal consequences

Having established both the objective and audience of the *Mūǧabāt*, we shall turn now to an exploration of the two parts that treat specifically the doctrine and procedures of a "legal consequence", or *al-mūǧab*; namely, the preface and the subsequent section. We shall proceed by means of a close textual reading, which will afford us the ability to analyze the doctrines and arguments forwarded by Ibn Quṭlūbuġā regarding the *mūǧab*. The objective is to examine how a Mamluk-era jurist, addressing the problems arising out of the pluralistic judiciary, developed and utilized the concept of the *mūǧab* in his construction of a jurisprudential solution to this problem; and to demonstrate how the procedural rules that he posits serve as technical "safety mechanisms" for the smooth running of the judicial system, by clearly delimiting the range of actions that inexperienced (or unscrupulous) judges may effect in executing their responsibilities in the context of the Mamluk judiciary.

Before beginning to walk the reader through the practical aspects of his judicial responsibilities, Ibn Quṭlūbuġā prefaces the *Mūǧabāt* with a definition and defense of the jurisprudential theory of *mūǧabāt al-aḥkām* (the consequential obligations resulting from court decisions). He does so by narrating the following judicial incident:

> My opinion has been solicited regarding the following case: A man mortgaged his real property, upon which a Ḥanbalī judge ratified the act and pronounced the consequences of the contract to be in effect (*ḥakama fī-hī bi-l-mūǧab ḥākim Ḥanbalī*). Thereafter, the mortgagor (*al-rāhin*) vested the mortgaged property into an endowment trust (*waqafa al-ʿiqār*). Ratifying the act, a Ḥanafī judge pronounced the consequences of this endowment to be in effect and legally binding. Thereafter, the mortgagor redeemed the morgage, sold the property, and sought out the Ḥanbalī judge in order that the latter may decree the endowment void (*bāṭil*) and the sale valid, on the basis that, according to the judge's *maḏhab*, any transaction involving a mortgaged property by the mortgagor is invalid (*ʿadam ṣiḥḥat taṣarruf al-rāhin fī al-rahn*).[23]

22. On this distinction, see JOHANSEN 1988, p. 264-82, who engages with earlier arguments of both Joseph Schacht and Chafik Chehata regarding its ramifications for the relationship of law to ethics in *fiqh*. For examples of the utility of this distinction in modern *fiqh* debates, see KHAN 2008, p. 95.

23. Ibn Quṭlūbuġā, *Mūǧabāt al-aḥkām*, p. 69-70.

From the beginning, then, the *Mūğabāt* is framed by problems resulting from a pluralistic judiciary. There is a conflict of laws resulting from the string of legal transactions surrounding a single piece of property, since each of the state-sanctioned Ḥanafī and Ḥanbalī judiciaries hold differing views as to validity of one of the transactions: according to the Ḥanafī *maḏhab*, the property may not be sold since it has been vested into a trust, and this investiture has been ratified by a judge; according to the Ḥanbalīs, no property held in mortgage may be sold, gifted, or otherwise disposed of (such as through alienation of the property into mortmain via the trust) by the mortgagor whilst held in mortgage by the mortgagee, and any such transaction would be deemed invalid and thus void. As such, the Ḥanbalī judge deemed the Ḥanafī's ratification of the endowment whilst the property was held in mortgage void, and — seeing as the property was later redeemed before it was consequently sold — pronounced the later sale of the property valid. The Ḥanafī judge, it is safe to assume, begged to differ.

Ibn Quṭlūbuġā proceeds to deliver his response to this consultation, with important consequences for the Ḥanbalī judge and his judicial act:

> I responded: The man's vesting the mortgaged property into a trust was a valid act (*ṣaḥīḥ*), while the subsequent sale is to be deemed void (*bāṭil*). Furthermore, the Ḥanbalī judge has no right to interfere in the trust (*waqf*) by deeming it void; and even if he should do so, his decision is of no legal consequence.[24]

Having reported his response, the author continues on to relate a scholarly session involving a group of judicial appointees (*ḫulafā' al-ḥukm al-ʿazīz*) representing all four *maḏhab*-s at which he was present, and in which there arose a discussion of his solution to the problem of the conflict of laws in the judiciary. As befits the affiliations of his interlocutors, he begins to justify his response by appealing to two jurisprudential principles and doctrines from not only his own Ḥanafī *maḏhab*, but from across all four schools; principles which, it is implied, the Ḥanbalī judge in the case at hand failed to observe: first, that judgments may not be arrived at through intuition (*ḥads*) or conjecture (*taḫmīn*), and that any judgment so passed is not to be executed (*ġayr nāfiḏ*); and second, that a judge has the authority to issue judgment only on the case presented to his court. Based upon these two interrelated principles, a judge is not permitted to issue judgment on any matter other than that legal action brought to his court; for, to do so, he would be passing judgment on a matter "that is known neither to the claimant, nor to the defendant, nor most likely even to the judge himself";[25] the implication being that this is the error of which the Ḥanbalī judge was guilty.

Here, an objection may have been raised on behalf of the Ḥanbalī judge: was the second judgment of the Ḥanbalī judge not merely in keeping with the legal consequences (the *mūğab*) of the first? That is to say, since in the first instance the transfer of the property's

24. Ibn Quṭlūbuġā, *Mūğabāt al-aḥkām*, p. 70.

25. Ibn Quṭlūbuġā, *Mūğabāt al-aḥkām*, p. 70.

status into the mortgage had been ratified by the Ḥanbalī judge in accordance with the doctrine of his school of law, should not also any further actions be assessed in light of the legal consequence of this initial decision?

Ibn Quṭlūbuġā responds with a resounding "no", and, averting any charge of *maḏhab*-bias, replies: "Never have we heard any leading scholar of the Ḥanbali *maḏhab* ever term such a thing 'a legal consequence (*mūǧab*)'."[26] In support of this, he relates a definition of the *mūǧab* from an epistle of the Chief Judge of the Ḥanbalites, Muḥibb al-Dīn Aḥmad b. Naṣr Allāh al-Baġdādī (d. 844/1440), dedicated to the very subject:

> As for "issuing judgment as to the legal consequences (*al-ḥukm bi-l-mūǧab*)", this denotes issuing judgment as to the consequences of a claim made in the court that is supported by documentary or other evidence (*mūǧab al-daʿwā al-ṯābitah bi-l-bayyina aww ġayrihā*). This is the meaning of "the legal consequence (*al-mūǧab)*", for which there is no other meaning.[27]

The citation continues to demonstrate how the legal consequence is to be determined:

> A claim is examined as follows: if the claim comprises that which necessitate the validity of the contract under dispute (*al-ʿaqd al-muddaʿā bi-hī*), then "a judgment as to the legal consequences (*al-ḥukm bi-l-mūǧab*)" is a judgment as to the contract's validity (*ḥukm bi-l-ṣiḥḥa)*; if the claim does not comprise that which necessitates the validity of the contract under dispute, then "a judgment as to the legal consequences" may not be a judgment as to the contract's validity.[28]

This sentence determines that "a judgment issued in accordance with legal consequences", then, is intrinsic to the case at hand, and does not entail issuing judgment in light of previous judgments of the legal status of the objects of litigation; it involves determining, for example, the validity of a contract or otherwise. Ibn Quṭlūbuġā ends his citation of Ibn Naṣr-Allāh al-Baġdādī with this final clarification as to the nature of the *mūǧab*:

> A "judgment as to the legal consequences" is a pronouncement upon the contracting party (*al-ʿāqid*) as to the obligations for which he is liable resulting from the contract; it is not to adjudge the contract itself (*lā ḥukm bi-l-ʿaqd*).[29]

This, then, is an explicit statement, by a leading Ḥanbalī jurist, that a judge is only to adjudicate upon the object of the claim brought before him, and upon no other matter. Based upon this, Ibn Quṭlūbuġā now turns to delivering his own verdict regarding the Ḥanbalī judge's actions in the original story:

> What we may learn from this is that if the [Ḥanbalī] judge was aware of this [i.e. the meaning of *al-mūǧab*], then his judgment could only have been issued regarding the validity of the mortgage – a matter for which no litigation was brought before him – or regarding the admission (*iqrār*) of the mortgagor as to having mortgaged his property, and of the mortgagee as to having

26. Ibn Quṭlūbuġā, *Mūǧabāt al-aḥkām*, p. 70.
27. Ibn Quṭlūbuġā, *Mūǧabāt al-aḥkām*, p. 71.
28. Ibn Quṭlūbuġā, *Mūǧabāt al-aḥkām*, p. 71.
29. Ibn Quṭlūbuġā, *Mūǧabāt al-aḥkām,* p. 71.

> received the security; he has not been appointed to pass judgment as to any other disputed matter beyond this. If, however, this judge was not aware of this, then he will have passed judgment on an ambiguous matter the meaning of which he does not actually understand.[30]

Ibn Quṭlūbuġā has now rendered the Ḥanbalī judge's invalidation itself invalid, on the basis that the principle of legal consequences is shared across the *maḏhab*s, and that the Ḥanbalī exceeded the remit of his jurisdiction and appointment by passing judgment on a matter which had not been brought in litigation before him.

Our author's audience of judges is not yet satisfied: what, then, is the status of the action of the Ḥanafī judge who had ratified the vesting of the mortgaged property into a trust? Ibn Quṭlūbuġā responds that, so long as the judge had passed judgment in accordance with the legal consequences spelt out by the jurists of the *maḏhab* of his judicial appointment, then the mention of "legal consequences", here, would entail a judgment as to the irrevocability (*luzūm*) of the mortmain property held in trust, for the jurists have explicitly stated that an act such as that performed by this particular property's owner is valid, and, once the property has been vested into a trust, the endowment cannot be revoked under any circumstance. And what might be the textual evidence for this from the *maḏhab*, ask his interlocutors?

> I replied: The jurists have said that if, based upon a valid claim and sufficient witnessing thereto, the vesting of a property into trust had been ratified by a judge, only for the property owner to then negate that he had actually vested the property as such; and if it was the opinion of the judge that the vesting of the property into the trust had been valid and binding: in such a case, it is not permissible under any circumstance to revoke the trust. By consensus of the jurists (*bi-l-iğmāʿ*), the investiture is to be deemed executed (*nafaḏ*).[31]

In short, then, the action of the Ḥanbalī judge had been illegal due to his misunderstanding of the notion of the *mūğab*: his power of adjudication extends only to the case immediately before him, and does not derive from his having previously ratified the mortgaging of the property. The act of the Ḥanafī judge was, on the other hand, legal, because it was a distinct act, adjudged only in light of its own internal conditions whilst respecting the legal consequences of past judicial acts where were themselves issued in accordance with that other judiciary's own procedural and substantial laws. In other words, the Ḥanafī judge correctly issued a decision only as to the legal consequences of the specific action brought before him (namely, the vesting of the property into the trust) and did not interfere or attempt to overturn the Ḥanbalī judgment. Just as the Ḥanbalī's original judicial act was procedurally and substantially valid and binding (such that it could not be overturned or revoked by any other judge) and its legal consequences executed (such that the property was deemed to be held in security by the mortgagee), likewise was the Ḥanafī's ruling procedurally correct according to his own *maḏhab*'s rules. As such, the legal

30. Ibn Quṭlūbuġā, *Mūğabāt al-aḥkām*, p. 72.

31. Ibn Quṭlūbuġā, *Mūğabāt al-aḥkām*, p. 72.

consequences of his legal decision was binding not only upon the litigants but also upon the judges of all concurrent *maḏhab*-judiciaries: the property was now, irrevocably, a *waqf*.

Ending this narrative, Ibn Quṭlūbuġā recalls how a final question was then put to him: Have your Ḥanafī jurists explicitly delineated what the legal consequences of an act of vesting property into a trust entails? "Yes", he answers, "and likewise they have explicitly detailed the legal consequences of all other legal transactions (*bi-mawāǧib ǧamīʿ al-taṣarrufāt al-šarʿiyya)*, which is something I am not aware has been done by the jurists of any *maḏhab* other than our own; and God knows best."[32]

It is at this point that the preface comes to an end, and he turns now to an explication of the legal consequences of the various legal acts, civil or criminal, treated by *fiqh*. But before we turn to an analysis of this first section of the handbook, it is worth pausing to note not only what he has deconstructed in his retelling of this tale of a conflict of laws, but also what Ibn Quṭlūbuġā does *not* comment upon: namely, that the man involved in this case was practicing a type of "forum-shopping". As a private individual involved in a civil matter, he was free to bring his case before the *maḏhab*-court of his choice, as the four *maḏhab*-courts all had concurrent jurisdiction.[33] Our Ḥanafī jurisprudent does not chastise the man for moving between *maḏhab*-courts, despite noting that the man clearly was seeking to manipulate the jurisdictional concurrence to his own advantage. Many earlier Mamluk-era jurists across the *maḏhab*-s had argued that "the layman is bound by no *maḏhab*" (*al-ʿāmmī lā maḏhab la-hu*), and as such was free to seek the legal consultation (*fatwā*) of a jurist of any *maḏhab*.[34] Ibn Quṭlūbuġā here is dealing with its corollary – the seeking of a judgment from a court of any *maḏhab* – and significantly does not censure the activity of the plaintiff in and of itself. As he clarifies elsewhere in the *Mūǧab*, the remit of the courts of law is either validity or invalidity (*al-ḥukm bi-l-ṣiḥḥa*); the wider range or moral categories found in the works of *fiqh* are issues of the moral conscience of the individual, and are not the business of the judge.

To summarize, Ibn Quṭlūbuġā's answer implies a jurisprudential theory of legal consequences which, in light of the *maḏhab*-pluralistic system of the age, establishes the illegality of the Ḥanbalī judge's invalidating an earlier court ruling issued by the Ḥanafī judge. So long as the two cases were distinct, any judgment that a subsequent judge issues must assume the legal validity of all consequences and obligations resulting (*mūǧabāt*) from a preceding case. By means of this narrative, our Ḥanafī master-jurist has sought to establish that the doctrine of legal consequences (*al-mūǧab*) is clearly attested to in works

32. Ibn Quṭlūbuġā, *Mūǧabāt al-aḥkām*, p. 72-73.

33. This was not necessarily the case for criminal affairs, where the state and its officials was responsible for initiating proceedings, which often could involve the determination of *maḏhab*-jurisdiction. For examples of this, and the role of the Šāfiʿī Chief Judge (*qāḍī al-quḍāt*) in overseeing the apportionment of such cases, see Rapoport 2003, p. 223.

34. See, for example, the earlier Šāfiʿī jurist Badr al-Dīn al-Zarkašī (d. 794/1392) in his *al-Baḥr al-muḥīṭ*, VI, p. 319–20, who relates the opinions of a number of Mamluk-era jurists from multiple *maḏhab*-s on this point.

from beyond the Ḥanafī *maḏhab*, and as such is binding upon all judges appointed in their respective concurrent courts within the judiciary.

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As mentioned in our outline of the work, the transition from the preface to the body of the handbook proper is marked by the rhetorical device of a favored student requesting that the elder jurist spell out the legal consequences for all legal transactions (*al-taṣarrufāt al-šarʿiyya)*. The rhetorical tones of the preface now disappear, and Ibn Quṭlūbuġā prepares to deliver his first catalogue of such matters to which a judge must have recourse when issuing judgments. Before doing so, though, he prefaces his cataloguing the legal consequences of various legal transactions with a treatment as to the terminology associated with the concept of the *mūğab*. He begins with a definition from a Ḥanbalī work entitled *al-Mustawʿib*:[35]

> The consequence of a performative act is the legal effect resulting from the Lawgiver making that act a cause for the attainment of the effect (*mūğab al-inšāʾ aṯar ğaʿl al-šāriʿ ḏālika al-inšāʾ sababan fī ḥuṣūli-hi*).

That is to say, the Lawgiver has created a legal causal relationship between *Action A* and *Effect B*; if *Action A* is deemed to have occurred (as determined through the fulfillment of legal stipulations and conditions specific to that act), *Effect B* is necessarily entailed. Ibn Quṭlūbuġā continued on to clarify that the fellows of his legal school (*aṣḥābu-nā*, i.e. the Ḥanafīs) use a number of synonymous terms for the concept of legal effects: the consequence (*al-mūğab*), the requisite (*al-muqtaḍā*), and the judgment (*al-ḥukm*). Ibn Quṭlūbuġā then provides a couple of samples from two well-known Ḥanafī *fiqh* works — the *Hidāyah* of al-Marġīnānī (d. 597/1197) and the *Šarḥ al-Ğāmiʿ al-ṣaġīr* of al-Ṣadr al-Šahīd Ibn Māza (d. 616/1219) — to show how, in their respective treatments of the same *fiqh* case, one author might use the term *mūğab,* while the other would use either of its synonyms, *muqtaḍā* or *ḥukm*.[36]

Having dealt with the definition and synonyms of the *mūğab*, Ibn Quṭlūbuġā then presents his catalogue of the legal consequences of various acts. This (like the three

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35. I have identified two works of *fiqh* with this title: a Ḥanbalī work entitled *al-Mustawʿib* by Nāṣir al-Dīn Muḥammad b. ʿAbd Allāh al-Sāmirī al-Ḥanbalī (d. 616/1219-20); and *al-Mustawʿib li-ziyādāt masāʾil al-Mabsūṭ mimmā laysa fī al-Mudawwana* of the Malikī jurist ʿAbd al-Raḥmān al-Qayrawānī (d. 380/990), on which see AL-ZIRIKLĪ 2002, *al-Aʿlām*, III, p. 325. In light of the context in which it has been quoted, I am operating on the assumption that it is the Ḥanbalī work that is indeed the referent (this is also the assumption of the *Mūğabāt*'s editor): the fact that the theory and procedural dimensions of the *mūğab* appear to arise historically in the writings of post- "classical"-era jurists (of which the Ḥanbalī al-Sāmirī is one) grappling with the developments of pluralistic judiciaries and colleges of law lends further support to this conclusion. Further to this final point, it should be noted that a similar definition and discussion of the scope and role of the *mūğab* is also found in an epistle of the *muğtahid*-level Šāfiʿī jurist Tāqī al-Dīn al-Subkī (d. 756/1355), in his *Fatāwā al-Subkī*, II, p. 368–386, "Kitāb al-Iqrār", §2. Again, the Mamluk-era al-Subkī also engages with the views and opinions of both his and the other *maḏhab*-s as to the theory and utility of the *mūğab*, and does not treat this procedural matter simply as one of a single *maḏhab*'s unique rules, further lending support to the historical importance of this doctrine in the context of the pluralistic Mamluk judiciary.

36. Ibn Quṭlūbuġā, *Mūğabāt al-aḥkām*, p. 73.

subsequent parts) is arranged according to the organisational rubric (*tabwīb*) of a subset of Ḥanafī textbooks of *fiqh:*[37] the *Hidāyah*,[38] *Kanz al-daqā'iq*, *al-Wāfī*, and *al-Kāfī*.[39] These popular works frequently formed the basic curriculum of legal studies in Ibn Quṭlūbuġā's era; legal officials such as judges and muftis would have been familiar with this arrangement, thus facilitating easy discovery of the legal consequences required for the case at hand. The *mūğabāt* are adduced from major legal reference works such as *al-Muḥiṭ al-Burhānī*,[40] *Badā'iʿ al-ṣanā'iʿ*,[41] and *al-Kifāya:*[42] these are voluminous and conceptually dense works, authored by Central Asian jurists, often viewed as a peak of Ḥanafī *fiqh* writing in the Middle Periods.[43] As a result, they are also often seen as daunting challenges to the average student of law, and would not have generally formed part of basic legal studies; instead, they would rather have served as reference works or been read with advanced jurists beyond the confines of a basic law college's course.[44] This, then, is the senior jurist's scholarly favour to the harried (and, in the view of Ibn Quṭlūbuġā, imperfectly educated[45]) professional judges. It should also be noted that, in his presentation of the material, the author's own voice is generally absent; only occasionally will he interject a clarification, preceded by a "*qultu*", as to the import of or object by the legal consequent.[46] This is consistent with the purposes of a

37. See Chapter 2 of Al-Azem 2011 for a prosopographical study of the various branches and schools of Ḥanafism in Central Asia and beyond, and the relative importance of each of the following works and their authors for rule-making in the Ḥanafī *maḏhab*.

38. Burhān al-Dīn al-Marġīnānī (d. 593/1197), *al-Hidāya.* Cf. Ibn Abī al-Wafā', *al-Ğawāhir al-muḍiyya,* II, p. 627–29; Ibn Quṭlūbuġā, *Tāğ al-tarāğim,* p. 206–7; Heffening, s.v. "al-Marghīnānī", *Encyclopaedia of Islam, Second Edition* 2014; Meron 2002, p. 410-16.

39. These final three — *Kanz al-daqā'iq*, *al-Wāfī*, and *al-Kāfī fī šarḥ al-Wāfī* — are all works of the same author Abū al-Barakāt ʿAbd Allāh b. Aḥmad al-Nasafī (d. 710/1310-11). Cf. Ibn Abī al-Wafā', *al-Ğawāhir al-muḍiyya,* II, p. 294-96; Ibn Quṭlūbuġā, *Tāğ al-tarāğim*, p. 174-5.

40. Burhān al-Dīn Maḥmūd Ibn Māza al-Buḫārī (d. 616/1219), *al-Muḥīṭ al-Burhānī.* Cf. Ibn Quṭlūbuġā, *Tāğ al-tarāğim*, p. 173; ʿAbd al-Ḥayy al-Laknawī, al-*Fawā'id al-bahiyya,* p. 314, 336–38.

41. ʿAlā' al-Dīn al-Kāsānī (d. 587/1191), *Badā'iʿ al-ṣanā'iʿ*. Cf. Ibn Abī al-Wafā', *al-Ğawāhir al-muḍiyya,* IV, p. 25; Ibn al-ʿAdīm, *Buġyat al-ṭalab*, X, p. 4347.

42. A commentary by Maḥmūd b. ʿUbayd Allāh al-Maḥbūbī (d. 745/1344) on Burhān al-Dīn al-Marġīnānī's *al-Hidāya.* Cf. Ibn Abī al-Wafā, *al-Ğawāhir al-muḍiyya,* IV, p. 369–70; Ibn Quṭlūbuġā, *Tāğ al-tarāğim*, p. 291; al-Laknawī, *al-Fawā'id al-bahiyya,* p. 338.

43. For more on the periodization of post-formative Ḥanafi *fiqh*, see "Chapter 2. History" of Al-Azem 2011.

44. See, for example, Subtelny and Khalidov 1995, esp. p. 226-36, who present the *curriculae vitae* of two Timurid Ḥanafī scholars. In the case of the first scholar, the *Hidāya* is mentioned four times, and the commentary of al-Maḥbūbī on it once, to the exclusion of any other works of *fiqh*; this likely betrays a basic legal education. In the case of the second *mašyaḫa,* the scholar under study was granted authorizations in numerous longer works of the *maḏhab*, such as *al-Muḥīṭ al-Burhānī*: this may reflect that he was a more accomplished student of law than the first scholar, or it may simply mean that he had been more proficient in acquiring certificates (*iğāzah*-s) from the jurists and scholars whom he had met and with whom he had studied.

45. See, for example, Ibn Quṭlūbuġā's withering comments on the quality of the judiciary of his day: "The *mašāyiḫ* of our *maḏhab* hold this position due to the corrupt state of the judiciary... [Ḥāfiẓ al-Dīn] has said: 'It is hidden from no one that the decisions of the judges of our lands do not carry the weight of a specious argument, let alone a proof...'." (Ibn Quṭlūbuġā, *Mūğabāt al-aḥkām,* p. 192).

46. E.g., in the section treating the legal consequences of a claim (*Mūğabāt al-aḥkām,* p. 91). We shall return to a discussion of the significance of this in our discussion of his use of binding precedent.

handbook: the author is not making arguments, *per se*, as to the substantive dimensions of the law. The forum for arguments as to the *taṣḥīḥ* — where the *maḏhab*'s centuries-old range of legal opinions on substantive *fiqh* matters may be assessed, modified, and even overturned — is the genre of *fiqh* commentary, and Ibn Quṭlūbuġā's own contributions to such centuries-spanning debates may be found in his *al-Taṣḥīḥ wa-l-tarğīḥ*, a commentary on the compendium of the ʿAbbāsid-era Abū al-Ḥusayn al-Qudūrī (d. 428/1037).[47]

The procedural rules following from the doctrine of legal consequences

Upon completing his catalogue of the legal consequences for each topic of law, Ibn Quṭlūbuġā returns to the ramifications of the doctrine of *mūğabāt* for the judge's responsibilities. There are three distinct but related categories of judgment (*ḥukm*) of which the judge must not only be aware, but of which he must make explicit mention in his judgment.

First, Ibn Quṭlūbughā instructs the legal official to examine the objective of the litigation: is the case one in which the consequences and effects of a person's or a group of persons' actions are under dispute? Or is it one in which some other dimension of an act is under dispute? If indeed the objective of the litigation is to clearly identify and delimit the consequences of a given act, then the judge's task is specifically to issue judgment as to the legal consequence: he is to explicitly and unambiguously pronounce upon the privileges and duties the act results in and which must be observed by one or both parties, these privileges and duties *being* the consequences of the act. In the case that the objective of the litigation is not the clarification of the consequences of a party's act, but instead some other matter (such as the very facticity of a disputed act, or its legality), then he is to pronounce only upon that.[48]

Again, Ibn Quṭlūbuġā wishes to demonstrate that this principle, this division, and these procedures are not specific to the author's own Ḥanafī *maḏhab*, and, again, to do so he cites from the jurisprudential writings of authors from other *maḏhab*-s. First, he quotes the Ḥanbalī *al-Mustawʿib* in order to delimit the range of categories relevant to issuing judgment of the second type—i.e. when the objective of the litigation is to resolve a dispute as to the *status* of an act recognized by law, or its *function* in relation to subsequent acts or facts in a case, and not to determine its legal consequences:

> The judge (*al-ḥākim*) is not to render judgment save in accordance with a legal category (*ḥukm šarʿī*): that is, either obligation (*al-īğāb*), prohibition (*al-taḥrīm*), permissibility (*al-ibāḥa)*, validity (*al-ṣiḥḥa)*, or invalidity (*al-fasād*); likewise, causality (*al-sababiyya)*, conditionality (*al-šarṭiyya)*, and preventiveness (*al-māniʿiyya).*[49]

47. Ibn Quṭlūbuġā, *al-Taṣḥīḥ wa-l-tarğīḥ*; Al-Azem 2011.

48. Ibn Quṭlūbuġā, *Mūğabāt al-aḥkām,* p. 102.

49. Ibn Quṭlūbuġā, *Mūğabāt al-aḥkām*, p. 102-03.

That is to say, the other categories used to assess the moral dimensions of a human person's acts – recommendation (*nadb*) or dislike (*karāha)* – are not of relevance to a court of law, for, as the author of *al-Mustawʿib* explains, "they do not entail direct coercion or inevitable consequences" (*li-anna-hu lā ilzām fī-hā mubāšara wa-lā istilzām*),[50] which is the only remit of the judiciary. From the perspective of classifying an act in itself, the court is only concerned with *legal* categories: obligation, prohibition, permissibility, validity, or invalidity (the legal *statuses* of an act); and causality, conditionality, and preventiveness (the legal *functions* of an act). Here, Ibn Quṭlūbuġā pauses to clarify and emphasize that the term "legal consequence" applies to none of these legal categories cited above: these are not consequences, or effects, of an act, but only determinations as to its legal status.[51]

Nonetheless, knowledge of these categories of status and function are important to even the judge who is only being asked to determine the legal consequences of an act in litigation. Having clearly divided, from the perspective of the concept of the *mūǧab*, all judgments into being either upon the consequence or upon some other, non-consequential aspect of the act (i.e., its status or function), Ibn Quṭlūbuġā then returns to underscoring a point he had made earlier in the preface to the work: namely, that the judge may only pronounce upon the actual disputed point of the litigation brought before him, and no other. In support of this position, he cites another treatise on the jurisprudence of the judiciary, the *Tabṣirat al-ḥukkām fī uṣūl al-aqḍiya wa-manāhiǧ al-aḥkām* of the Mālikī jurist, Burhān al-Dīn Ibrāhīm Ibn Farḥūn al-Yaʿmurī (d. 799/1397),[52] who declares:

> The judge may only issue a ruling upon that which has clearly been established in his court, for judgments cannot be passed upon non-existent affairs.[53]

Why does Ibn Quṭlūbuġā repeat this point again at this juncture? On the one hand, there is his concern to demonstrate the existence of a cross-*maḏhab* consensus as to the theoretical and procedural dimensions of an underlying, trans-*maḏhab* jurisprudential system. But beyond this, at this exact juncture in the work, Ibn Quṭlūbuġā is also preparing to end his treatment of the concept and procedural aspects of the *mūǧab*, and to turn to the ramifications of legal obligations for the remaining procedures that the jurist will pursue in the course of his judicial responsibilities: managing the pleadings, determining the relevant binding precedent, and judicial documentation. Before doing so, he must make clear to his readership that they are only to adjudge the specific point that has been brought before them, and should only *additionally* pronounce upon any corollaries that

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50. Ibn Quṭlūbuġā, *Mūǧabāt al-aḥkām*, p. 103.

51. *Ibn Quṭlūbuġā, Mūǧabāt al-aḥkām, p. 103.*

52. Ibn Quṭlūbuġā does not actually specify either the name of the author, nor even the full title of the work, refering to the work only as *Manāhiǧ al-aḥkām.* Nonetheless, I do not believe we need to hesitate in identifying his so-called "*Manāhiǧ al-aḥkām*" with Ibn Farḥūn's *Tabṣirat al-ḥukkām fī uṣūl al-aqḍiya wa-manāhiǧ al-aḥkām*; Ibn Quṭlūbuġā explicitly cites him and *Tabṣirat al-ḥukkām* in his *al-Taṣḥīḥ wa-l-tarǧīḥ ʿalā Muḫtaṣar al-Qudūrī* (see, for example, p. 121-22 of that work), likewise when treating jurisprudential problems arising from the concurrent jurisdictions of the Mamluk judiciary.

53. Ibn Quṭlūbuġā, *Mūǧabāt al-aḥkām,* p. 103.

are implicit in their judgments. That is to say that in the case of a judgment as to the consequences of an act (*al-ḥukm bi-l-mūǧab*), the judge is also expected to make explicit the legal status of an act, namely that its having a legal consequence inherently implies, *ipso facto*, that it is *valid*:

> If the objective of the litigation is to determine the legal consequence (*al-mūǧab*) of an act, then the validity of the act must also be established (*fa-lā budd an tuthbat al-ṣiḥḥa)*, in order that the act may implicitly be adjudged to be valid; for there can be no legal consequence to an act which is not itself valid.[54]

The judge may legally only pronounce upon the case at hand, as Ibn Farḥūn is cited in order to establish; the above clause, then, is meant to clarify for the judges reading the treatise that their pronouncements as to the implicit validity of an act, when adjudging legal consequences, does not transgress this dictum: such a pronouncement is merely a procedural exercise meant only to make explicit that which is implicit, for the sake of the plaintiffs, and for the sake of any possible subsequent judicial action.

Having clarified this relationship between the legal validity and the legal consequences of an act, the author reminds the judges that they are only to proclaim those consequences and legal effects that are actually possible for any given valid, legal act:

> It is stated in both the *Badā'iʿ* and the *Mustawʿab*: "A legal consequence is the result of a valid act (*al-taṣarruf al-ṣaḥīḥ*), and as such the consequence may only be one which may [be possible to] be established in the process of that particular act."[55]

It is clearly for this purpose of quickly identifying and thus adjudging the correct legal consequence for any given act that Ibn Quṭlūbuġā has provided the judges reading his handbook with the topically-organized catalogue of *mūǧabāt* in the preceding pages.

The final topic that our author treats is that of *time*: that is to say, the period which may elapse between the occurrence of an act and the actualization of its legal consequence. It would appear that, in light of many jurists' imperfect understanding of the meaning of *al-mūǧab*, Ibn Quṭlūbuġā wanted to ensure that there remain no misunderstanding as to the temporal relationship between an act and the realization of its legal consequence:

> [Al-Kāsānī] states in the *Badā'iʿ*: "The effect of a legally-permissible act (*taṣarruf šarʿī*) might be actualized (*yaẓhar*, lit. 'appear') immediately upon the occurrence of the act, and it might only be realized at some remove of time." It is well known that some legal consequences are actualized immediately [after the occurrence of a legal act], while others only at some remove of time, as has been mentioned in the *Hidāyah* in the section treating the legal consequences of a marriage, and just as other jurists have mentioned in the preceding [section cataloguing the] legal consequences of acts.[56]

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54. Ibn Quṭlūbuġā, *Mūǧabāt al-aḥkām*, p. 104.
55. Ibn Quṭlūbuġā, *Mūǧabāt al-aḥkām,* p. 104.
56. Ibn Quṭlūbuġā, *Mūǧabāt al-aḥkām*, p. 104.

Thus, when adjudging a case as to its legal consequences, judges must remain aware that some acts effect immediate consequences (e.g. a regular contract of sale, in which the property is immediately removed from the possession of the seller and enters immediately into that of the buyer),[57] whilst others may by their nature necessarily be deferred (e.g. a sharecropping contract, in which the legal consequence is the division of the produce between the investor and the laborer upon the physical fruition of the produce).[58] Being mindful as to which acts effect immediate consequences, and which deferred, will prevent litigants from misunderstanding when to expect the legal consequences to come into effect.

With this, Ibn Quṭlūbuġā has now instructed his readership as to the procedural rules and considerations that must be observed when adjudging litigation as to legal consequences, in light of the definition and theory which he had explicated above: the judge must limit himself to adjudicating only on what has been brought before him, especially in cases addressing actions (that is to say, consequences) of previous court-sanctioned acts, even when the previous court's *maḏab*-jurisdiction differed; he is to explicitly declare the legal validity of an act in the process of adjudging a dispute as to legal consequences, necessarily implicit as it is; and he must be mindful of the different scales of time that may occur between a legal act and the actualization of its consequences, in order that imperfect instruction at the close of the court's intervention not lead to further dispute and litigation merely due to a misunderstanding of obligations ensued.

In some of the manuscript copies of *Muǧabāt al-aḥkām*, Ibn Quṭlūbuġā closes his treatment of legal consequence (*al-mūǧab*) with the following:

> The practice of the predecessors (*al-salaf*) was to explicitly state what is implicitly entailed by the legal consequences (*mafhūmi-hi*), and not merely to make an oblique reference thereto (*laqab*). This is particular to cases in which the legal consequence itself is the object of the litigation, which, all said, is rare. And God knows best. [59]

Perhaps our master-jurist wishes to reassure his readership of judges that, despite the conceptual and procedural complexity of the doctrine of *al-mūǧab*, they may at least hope to be spared its difficulties owing to the rarity of litigation specifically over legal consequences.

Conclusion: The concept of the *mūǧab* and the *Maḏhab*-Law System

Ultimately, the *mūǧab* was only one of a number of the jurisprudential doctrines, precepts, and mechanisms meant to ensure a coherent and functional pluralistic legal system. Other doctrines, which Ibn Quṭlūbuġā also treats in the subsequent sections of his handbook, include the restriction of judicial discretion to the substantive doctrines of

57. Ibn Quṭlūbuġā, *Mūǧabāt al-aḥkām*, p. 85.

58. See Ibn Quṭlūbuġā, *Mūǧabāt al-aḥkām*, p. 98.

59. Ibn Quṭlūbuġā, *Mūǧabāt al-aḥkām*, p. 104.

maḏhab of their jurisdictional appointment (*taqlīd*); the doctrine of juristically-established precedents (*taǧrīḥ*), which binds legal officials to adjudicating only in accordance with the *maḏhab*'s chosen legal rules (*al-mutftā bi-hī*); limiting and systematizing legal proceedings; and the unification of the formulae of court documentation which may thus be recognised across all the *maḏhab* courts in the realm.[60] And, like many of the jurisprudential concepts which came to comprise the *maḏhab*-law system, the doctrine of "legal consequence" did not originate with Ibn Quṭlubuġā or even necessarily with his Mamluk-era colleagues who also wrote on similar themes; as we have seen, the term (or its synonyms) is found in the *fiqh* compendia and commentaries of the Ḥanafī branches of eleventh-century and twelfth-century Central Asia, as the *fiqh* tradition had much earlier theorized and identified the legal consequences of many legal acts. Rather, by placing the term "*mūǧabāt al-aḥkām*" into the very title of his work, Ibn Quṭlūbuġā has signaled the centrality of the doctrine to the wider objective of the handbook: namely, securing the unity and coherency of the pluralistic Mamluk judiciary and its functioning. Insofar as the judiciary is, ultimately, only as unified and coherent as the judges who comprise it, Ibn Quṭlūbuġā's efforts in delimiting judicial discretion is meant to buttress the consistency of the Mamluk society's legal system: in relation to the judges's discretion in substantial laws, through *tarǧīḥ*; in procedural laws, through the doctrine of the *mūǧab*.

The concurrence of multiple jurisdictions is inherently a threat to the coherence of any judicial system; the constellation of jurisprudential doctrines developed by Ibn Quṭlūbuġā and the jurists of his era, including that of the *mūǧab*, must thus be seen as a coherent and integral body of principles and procedures comprising a unified *maḏhab*-law legal system meant to avert this very danger. The doctrine of the *mūǧab* which we have examined, for example, delimits the errors that an inexperienced or otherwise unscrupulous judge may inflict due to the latitude permitted by a set of concurrent jurisdictions without any wider jurisprudential controls. The doctrine of legal consequences demands that the judge limit himself to adjudicating only the legal act which is the object of the case at hand. Under threat of having his own decision nullified by the Chief Judge of this pluralistic judiciary, the doctrine ensures that no judge attempts to overturn the legitimate decisions of other courts in earlier decisions: the decisions of all *maḏhab*-courts must be universally recognized by all. The doctrine of the *mūǧab* also universalizes across all *maḏhab*-s a set of steps that must be observed before a court's decision can result in legal consequences for the plaintiffs. All of this is only made possible by the *maḏhab*-law system: a set of universal jurisprudential doctrines and procedures, enforceable under threat of intervention by the Chief Judge in consultation with the leading jurists of the age, that undergirds the operation of individual *maḏhab*-s, court jurisdictions within the Mamluk judiciary.

60. A forthcoming article will complete the study of Ibn Quṭlūbuġā's handbook for judges, begun here, by treating each of the remaining sections on proceedings, binding precedent, and court documentation; and by analyzing the relationship between all of the sections of the work and the doctrines which they entail in demonstrating the existence of a wider *maḏhab*-law system.

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